

1 proposed sale order.

2 MR. SHAPIRO: The answer is yes.

3 MS. HARNER: Thank you.

4 The other comment I had on the lab
5 equipment accounts, Your Honor, is the Debtors
6 have added a sentence to Paragraph 11, which
7 basically reserves its right, buyers' right to
8 assert ownership interest on behalf of the debtors
9 on the lab equipment while.

10 I understand Your Honor can
11 certainly enter that order, we would ask if you do
12 enter it, that it be clear, given the fast pace
13 that things have moved in this case, that Lucent
14 be given an opportunity, of course, to review any
15 motion and appropriately respond before this Court
16 before an order is entered.

17 However, Lucent really doesn't
18 believe that language should be in the order at
19 all. The lab equipment was provided to the
20 Debtors prior to the petition date as equipment
21 for testing purposes. Lucent did not agree to
22 sell and Winstar did not agree to buy this lab
23 equipment. And in fact, all title has remained
24 with Lucent at all times since the commencement of

1 those cases.

2 Your Honor, just for the record,
3 Lucent has been trying to work with the Debtors to
4 get the automatic stay lifted, to the extent
5 necessary, to retake possession of the lab
6 equipment. That process was slow.

7 We avoided filing a motion with this
8 court under the representation made by counsel by
9 the Debtors that we could make it out. In fact,
10 we did work that out in a stipulation in October
11 wherein the accounts that are in issue in our
12 objection were to be allocated among Lucent and
13 the Debtors, and the lab equipment was to be
14 returned.

15 That stipulation was filed for the
16 Court's consideration. The prepetition agents and
17 the prepetition lenders filed an objection to the
18 stipulation. And notably it was not an objection
19 to the ownership of the lab equipment, it was only
20 an objection on the set-off rights, which Lucent
21 does not believe the Debtors have.

22 But bottom line, Your Honor, there's
23 an agreement filed with this Court wherein Lucent
24 is to have the lab equipment returned to it, and

1 we do not believe it's appropriate to give the
2 buyer a right to argue that the Debtor still owns
3 this equipment.

4 And we would respectfully ask that
5 the last sentence of Paragraph 11 be stricken from
6 the proposed order.

7 Third, Your Honor, Section 3.3 of
8 the purchase agreement purports to allocate the
9 purchase price, apparently for tax purposes.
10 However, the third sentence of Section 3.3 has an
11 acknowledgment by the buyer that the majority of
12 the purchase price is allocated to accounts
13 receivable.

14 Lucent does not believe that that
15 type of representation or allocation is
16 appropriate and would ask either that that
17 language be stricken from the purchase agreement
18 or at least that Your Honor's order approving any
19 sale in that agreement specifically provide that
20 the allocation and the representations in
21 Section 3.3 of the purchase agreement not be
22 binding on any parties in these Chapter 11 cases
23 for purposes of determining rights, claims and
24 interests, and the ultimate allocation of the sale

1 proceeds.

2 As Your Honor knows, Lucent asserts
3 a secured credit interest in the sale proceeds. I
4 assume we're going to be discussing those issues
5 with the secured lenders, and we do not believe,
6 especially since the secured lenders were parties
7 to the negotiations on the contract, and Lucent
8 was not, that we should be bound by any allocation
9 between the buyers and the Debtors.

10 THE COURT: All right. Does the
11 Debtor have a view on those five issues?

12 MS. HARNER: I would note I only
13 got through three. I am not moving as quick as I
14 thought I could.

15 MR. SHAPIRO: Let me respond to
16 those. It sounds like, number one, Your Honor,
17 her sale proceeds, we have put in a provision in
18 the order which says that the monies can't be
19 taken out without notice of the hearing, and so I
20 think she agreed that she's protected there.

21 With respect to the lab equipment,
22 what it says now is the buyer hereby reserves the
23 right to characterize the lab equipment as owned
24 by the Debtors. And to the extent an order is

1 signed by the Court, it should constitute every
2 purchased asset.

3 I think what I heard is she wants
4 to, at the very least, make sure the notice to --
5 subject to notice of hearing, I would ask if
6 they'd be receiving notice to hearing, and they
7 said, yes. So hopefully that resolves that
8 issue.

9 And on the allocation issue, the
10 contract as most contracts provide some sort of a
11 tax and other allocation, I think we can agree
12 that Lucent asserts all its rights to contest any
13 allocation that's agreed to by the buyer and the
14 seller for any other purpose as it relates to its
15 position as a secured creditor. And I agree that
16 would have to be heard at a separate hearing when
17 and if that issue ever arises.

18 THE COURT: All right. So what is
19 the last two?

20 MS. HARNER: I would just note,
21 Your Honor, that resolutions on one and two are
22 acceptable and on point two with respect to the
23 lab equipment, I still would ask Your Honor to
24 consider whether that language is appropriate

1 given the circumstances.

2 THE COURT: I think that under the
3 circumstances, the language is appropriate. I
4 don't think it in any way disenfranchises your
5 ability to make the claims you assert.

6 MS. HARNER: Thank you.

7 Okay. The fourth point, Your Honor,
8 in October, October 31st, the Debtors filed a
9 motion to reject a certain nonresidential lease of
10 real property for 200 Paul Street in San
11 Francisco, California and to abandon the property
12 there onto Lucent.

13 We have discussed this issue with
14 the landlords and so understanding that, the
15 Debtor removed everything from this leased
16 premises.

17 It bears some furniture and
18 fixtures, except for Lucent 5-E switches in which
19 Lucent has a valid and perfected lien. And that
20 was its equipment that the Debtors were proposing
21 to abandon to Lucent. That motion is scheduled to
22 be heard on the 20th at the omnibus, which has
23 now, I believe, been adjourned further.

24 But it's not clear to us and we've

1 asked for representations from the Debtors that
2 this equipment that has been abandoned or that the
3 Debtors are seeking to abandon to Lucent and
4 Lucent has already made arrangements with the
5 landlords to get off the property, so that the
6 landlord can start mitigating the damages and
7 relet. It is, in fact, excluded from the sale
8 assets.

9 MR. SHAPIRO: Your Honor, the only
10 thing I know about this is one of my colleagues
11 back in New York has been working with Lucent's
12 counsel to deal with this over the last couple of
13 months. I'm not sure it has much to do with
14 anything we're talking about today.

15 I don't believe that that particular
16 asset, which is one S-E switch, where is it, in
17 San Francisco?

18 MS. HARNER: Mm-hmm.

19 MR. SHAPIRO: Is part of the sale
20 proceeds, but I don't know what the buyers -- I
21 don't know if we can temporarily cart that out.
22 It's not necessarily used --

23 (Following a discussion held off the
24 record:)

1 MR. ALBALAH: It's no different
2 than anything else. We are buying all the rights,
3 title and interest, so the buyer has right and
4 interest.

5 THE COURT: That motion has been
6 moved to January?

7 MS. HARNER: 16th.

8 THE COURT: 17th or 18th. Yeah.

9 THE COURT: So we'll hear that
10 then.

11 I think the issue would be let's
12 assume for the moment that this is an asset that
13 is part of the sale that is going to the buyer,
14 and what we've said is all the proceeds get
15 escrowed. To the extent that Lucent has a valid
16 security interest and to the extent they could
17 demonstrate it has any value, presumably they will
18 have an argument to make on allocation of
19 proceeds. But I think that's to be reserved for a
20 later time.

21 Is that --

22 MS. SILVERSTEIN: Laurie
23 Silverstein, if I may be heard for a moment on
24 this issue.

1 My firm also represents the
2 landlords on the 2900 Paul Street property. We
3 have -- there was a motion filed specifically
4 abandoning that lease or rejecting that lease and
5 abandoning the property.

6 And we communicated with Debtors'
7 counsel who said the rejection of that lease was
8 irreversible, and we have been proceeding along
9 that way. The equipment is still in the premises,
10 I believe, although we have been trying to
11 cooperate in terms of getting it out there so we
12 can mitigate.

13 So the Debtor and buyer should be on
14 notice that to the extent that equipment is
15 sitting there, they will be looking for rent from
16 someone. And that the administrative expense will
17 not stop ticking with respect to administrative
18 with respect to the property.

19 We believe they should answer that
20 question today and we would hope that we could get
21 a consensual order in front of the Court prior to
22 the January 18th or whatever it is hearing now, so
23 that everyone's rights are protected. And given
24 that no other party objected either to that

1 motion, we were the only one who filed a comment
2 and had it to who to do with a non pro tunc effect
3 of the objection, given that no other party
4 objected to the rejection or abandonment of that
5 property, we think that should be resolved today.

6 MR. JONAS: Can I just say one
7 thing. We're Lucent's largest buyers of Excel
8 switches and we're having conversations already
9 preliminarily for -- we're starting with Lucent
10 about swapping you back to your 5-Es, and you
11 know, and you give us more Excels.

12 So I think the situation might just
13 resolve itself, but I don't know about this
14 particular --

15 MS. HARNER: Understood. That
16 would be wonderful. I was going to ask you when
17 you made your earlier statement about making the
18 party whole if we could include Lucent in there.

19 MR. JONAS: What are we going to do
20 with 29 5-E switches?

21 MR. SHAPIRO: Your Honor, I
22 think --

23 THE COURT: I don't think it's part
24 of this sale, so let's get to the fifth item.

1 MR. SHAPIRO: The Paul Street issue
2 has nothing to do with this.

3 MS. HARNER: That is right.

4 Finally, Your Honor, Lucent would
5 just note for the record that it does not believe
6 a reasonable opportunity was given to review all
7 of the documents related to this transaction, and
8 although we tried as diligently as possible to get
9 through them, we would reserve our right to bring
10 any further issues to you once we have actually
11 had a chance to read every word.

12 Thank you, Your Honor.

13 THE COURT: All right. Let me hear
14 Mr. Minuti. You have the last word here.

15 MR. MINUTI: Your Honor, good
16 evening. Mark Minuti from Saul Ewing.

17 Your Honor, I'm here today
18 representing two landlords, Heitman Capital Retail
19 as well as SV Atlanta Partners.

20 Your Honor, it was -- the Debtor had
21 indicated, I think, last week and this week that
22 landlord issues were essentially going to be
23 rolled, and it turns out I'm glad I came to this
24 hearing because I've looked at the order and I've

1 got some comments to the order. But I want to
2 start out with an observation.

3 Your Honor, last week we were before
4 Your Honor. There was no sale to approve and
5 you'll remember that the Debtors' president got up
6 and made a very impassioned speech. He said Your
7 Honor, I know you want to continue this until next
8 week, but I have landlords I want to pay. I have
9 carriers. I have employees I want to pay. Where
10 am I going to get the money? How am I going to
11 get the money?

12 Your Honor's response was there's
13 lots of bright people in this room. You'll figure
14 it out.

15 Well, the Debtor has figured it
16 out. And the way the Debtor has figured it out,
17 they are not going to pay anybody until we get to
18 the closing date with this buyer, and then from
19 the closing date forward, this buyer is going to
20 pick up the cost. But for this gap period of, I
21 think, the Debtors' principal will admit he hasn't
22 paid any landlord, for example, since December.
23 So both of my clients have post-petition claims
24 that haven't been paid and will have those claims,

1 and we'll run up to the closing date, and the
2 closing date, at which I understand the buyer will
3 pick those up.

4 Now, the buyer testified on the
5 stand and I agree with him, he essentially said I
6 shouldn't have to pay for the Debtors' defaults,
7 and I agree with that. I mean he should pay what
8 is a fair price for the asset.

9 The issue is how is the money going
10 to be allocated and disbursed. And so you have to
11 focus on who's going to benefit by the sale and
12 the person that's going to benefit by the sale or
13 the entity is going to be the DIP lender because
14 as the order is drafted right now, their lien
15 attaches to all the proceeds.

16 So what I'm getting out of this is
17 the possibility that when, 120 days, this new
18 buyer is going to want my contract and he's going
19 to cure my claim. But of course, there's the
20 possibility that he's not going to take my
21 contract. My cure claim is not going to be paid.

22 I have helped preserve the value of
23 these assets for the lender, and yet nobody is
24 going to pay this post-petition claim. So we

1 would object to the sale on an overall basis, and
2 I know I am just like many other folks in this
3 room. We shouldn't allow this sale to go forward
4 without the post-petition payments being made and
5 bring all these debts current.

6 If the sale is going to bring value
7 to the estate and is going to help the lender, the
8 Debtor has got to pay its way, and we shouldn't
9 have to rely simply on a possibility that, in
10 fact, this buyer is going to assume my contract
11 and that the buyer is going to be responsible for
12 the cure claim.

13 Turning to the form of the order, I
14 don't know that the order has been presented to
15 Your Honor. I don't know that you signed it.

16 THE COURT: Yes.

17 MR. MINUTI: These are all on Page
18 19.

19 THE COURT: We're not at this point
20 yet, and you can talk to the Debtor about any
21 modifications.

22 What the issue before me right now
23 is we have closed the evidentiary record on the
24 sale that's been proposed, and we have a competing

1 bid.

2 Once I decide which transaction is
3 selected, then your comments will be possibly
4 appropriate.

5 MR. MINUTI: Okay. So if Your
6 Honor is telling me that with regard to the form
7 of the order and some of the issues I have with
8 the order, we're going to come back at a later
9 time if it's done, work them out. I'm happy to do
10 that.

11 The only other thing I would say,
12 Your Honor, is both of my clients have filed
13 motions to compel payment of post-petition rent
14 and to compel assumption or rejection. If Your
15 Honor does not feel that today is the appropriate
16 day to deal with this issue as to whether the
17 Debtor should have more time in light of the
18 failure to pay this post-petition amount, I'm
19 happy to --

20 THE COURT: Those kinds of motions
21 are not on this agenda, but I don't know if you
22 noticed it for the December 20th. But because of
23 the work of this transaction, we moved those to
24 January, and I forget the January date.

1 MR. SHAPIRO: January 17th, I
2 believe.

3 THE COURT: January 17th.

4 MR. MINUTI: I'll put it on for
5 that date.

6 THE COURT: We are noticed for
7 January 17th. I think there's already 58 carriers
8 on.

9 MR. MINUTI: I'll get in line, Your
10 Honor.

11 THE COURT: I think that's the
12 time.

13 MR. GWYNNE: Kurt Gwynne on behalf
14 of Used Network Systems. I spoke to Mr. Sterly
15 prior to the prior hearing, and this also involves
16 commitment provided to the Debtor and software
17 licensed, and he agreed that to the extent that
18 the sale would have assumption and assignment of
19 the software license, that's not being dealt with
20 today, so whether it's assumable, or assignable or
21 not will be dealt with later.

22 And with respect to the equipment,
23 if the Debtor owns it, it's being sold. If the
24 Debtor doesn't own it, it's not being sold.

1 THE COURT: That's correct.

2 MR. GWYNNE: Thank you.

3 MR. GOLDBERG: Your Honor.

4 THE COURT: Yes.

5 MR. GOLDBERG: Robert Goldberg on
6 behalf of Sprint Communication Company, LLP.

7 I'm not objecting to the substance
8 of the proposed transaction, but on behalf of my
9 client we are objecting to the timing of it. And
10 we just wish to reserve our rights of a result of
11 the fact that it has been so expeditious, that my
12 client really hasn't had a chance to consider it.

13 I just want to go on record for
14 that. Thank you.

15 THE COURT: All right.

16 MR. KAROTKIN: Just so the record
17 is clear, I disagree with Mr. Minuti that his
18 clients provided any benefits to my clients.

19 THE COURT: We're not hearing that
20 today.

21 MR. KAROTKIN: Just so the record
22 is clear. I didn't want my silence to be noted
23 as --

24 THE COURT: The record will be when

1 the motion is heard. Okay.

2 MS. SILVERSTEIN: Your Honor, I
3 don't want to speak out of turn, but I am a little
4 confused about the process. And is what Your
5 Honor doing now just choosing between one buyer or
6 another, because there are substantive provisions
7 in the order and also in the management agreement
8 that's proposed that are very -- that are
9 problematic.

10 And I think probably people would
11 like to address them.

12 THE COURT: First, I have to decide
13 if one or the other transaction is the transaction
14 that I am approving. Then it would be appropriate
15 for the parties in interest to comment on the
16 orders that will be entered approving, but we're
17 not at that point now.

18 MS. SILVERSTEIN: Your Honor, part
19 of the transaction that I understand the Debtors
20 would like you to approve is a management
21 agreement that has substantive problems with it.
22 It's not a question of whether something is better
23 for the estate or not, it's a question of whether
24 there is authority under the Bankruptcy Code to,

1 in fact, approve a management agreement that has
2 certain provisions in it or have a form of order
3 that has certain provisions in it.

4 My understanding from the testimony
5 is that these were integral parts of the
6 negotiation that the buyer requires as part of the
7 sale that the Debtors seeks approval of, so I want
8 to make certain that we're not -- that if Your
9 Honor chooses to approve a sale that we still have
10 the ability to tell Your Honor why the management
11 agreement, in particular, and other people may
12 have other issues.

13 THE COURT: Well, when I make the
14 ruling, the buyer will walk away if they don't
15 like them, I assume. But you have to, at some
16 point, decide what you are talking about.
17 Bankruptcy lawyers have to get into a courtroom
18 demeanor. It's not a free for all until you know
19 what you're talking about. It's hard to address
20 it..

21 And then I assume the buyer if you
22 don't like the rulings I make substantially about
23 the management agreement, you'll walk away from
24 the deal.

1 MS. SILVERSTEIN: Thank you, Your
2 Honor.

3 THE COURT: Is that your
4 understanding?

5 MR. JONAS: You seem completely
6 reasonable.

7 THE COURT: I seem completely
8 reasonable? Hang around.

9 I'm only kidding. Yes.

10 MR. LADDIN: Your Honor, just for
11 the purpose of right now, I just want to clarify
12 one small point. Mr. Karotkin had asked which
13 order of the Court I had referred to earlier with
14 respect to Verizon's position that no entity can
15 have a claim that is senior to Verizon, unless
16 Verizon is paid in full.

17 I did want to, for the record,
18 identify Docket Number 166 and specifically
19 Paragraph 5 contained in that order.

20 THE COURT: Is that a stipulation
21 so ordered?

22 MR. LADDIN: Yes, it is, Your
23 Honor, and I'm happy to hand it in.

24 THE COURT: I don't need to see

1 it. He needs to see it.

2 I don't have any money in here. I'm
3 happy to enter into the order.

4 I am right now -- once we get to
5 that issue, I may have to make some decision about
6 it, but I mean right now it's not -- what's more
7 relevant is to give you an opportunity to flush
8 out the opposing offer, particularly in view of
9 issues such as cash availability, timing,
10 Mr. Minuti's eloquent impassioned plea for claims
11 that apparently in this alternative offer would go
12 on at least another eight or nine days.

13 So I'm going to give you a chance to
14 talk with the principals of that offer. And then
15 we'll come back and both sides proponents of the
16 offer that's on the table, and those with the
17 ultimate offer can tell me what they think, and
18 then I'll make a decision. Then we'll get into
19 the substance of the documents.

20 MR. LADDIN: Thank you.

21 THE COURT: On either side I don't
22 know if there's any document for the alternative
23 offer, but I assume you'll find that out when you
24 talk.

1 All right. We're going to take a
2 20-minute recess. We'll come back at 7:15.

3 (A brief recess was taken.)

4 MR. SHAPIRO: Your Honor, I believe
5 Mr. Rouhana and Mr. Canter had an opportunity to
6 meet with some of the carriers. I was not part of
7 that meeting.

8 I guess if Your Honor would like to
9 hear from them, I'm happy to hear from them. I
10 first would like to present the Debtors'
11 perspective on this.

12 At this point, we have a buyer who's
13 got a contract with us for at least, it appears to
14 be, \$40 million, putting \$68 million into escrow,
15 and who's willing to close tomorrow and start
16 picking up all the costs. And we know that the
17 burn for the rest of this month is, approximately,
18 10 to \$15 million.

19 And that all the people at this
20 table hopefully will start to get paid
21 immediately, and we don't have to become anymore
22 administratively insolvent.

23 As Your Honor knows, right before
24 Thanksgiving, we had a telephonic conference

1 because I was extremely concerned about where we
2 were in this case, and I didn't want that to
3 become an issue any deeper than where we were as a
4 result of that teleconference. We decided to go
5 forward on an expedited basis on the sale and here
6 we are today.

7 The Debtors do not believe that the
8 note that's being produced on the advice of
9 Blackstone has significant value. The reason for
10 that is it will be behind \$30 million of secured
11 indebtedness. That's \$5 million subordinated to
12 all \$30 million to senior secured indebtedness.

13 We don't know the terms of that
14 indebtedness. We don't have a contract with
15 Mr. Rouhana right now.

16 Mr. Rouhana -- it's a bit awkward
17 for me. Mr. Rouhana was the chairman of this
18 company, was my client for the last seven months,
19 but nevertheless, we are fiduciaries for the
20 estate. We have to do what is right for all
21 concerned.

22 I think at this point the Debtors
23 believe with the advice of Blackstone that the
24 best offer on the table right now is from IDT and

1 that at this point Mr. Rouhana's offer and
2 Mr. Rouhana has been participating in this process
3 including at the auction itself. So he has had
4 time to try to give us a contract and do other
5 things.

6 At this point it falls, I believe,
7 short, both in terms of certainty and in terms of
8 dollars.

9 THE COURT: All right. Is there
10 any refinement of the offer that was announced
11 here in open court to compete with the existing
12 sale that's proposed?

13 (Silence.)

14 THE COURT: Do any of the objectors
15 want to be heard in terms of the new sale?

16 (Silence.)

17 THE COURT: Does the trustee have a
18 position, Mr. Kenney?

19 MR. KENNEY: No, Your Honor, we
20 don't.

21 THE COURT: Yes, Mr. Rouhana.

22 MR. ROUHANA: May I say something,
23 Your Honor?

24 THE COURT: Sure.

1 MR. ROUHANA: I do appreciate
2 Mark's, the awkwardness of Mark's position and I
3 understand, Mark, that you're a fiduciary, and I
4 understand the role. And I have been one through
5 this process. I understand very much where we
6 are.

7 I do want to comment, though, on one
8 of the -- just one little bit of factual
9 information for you relating to the process which,
10 as we all know, has been unusual in this case.

11 We did appear at the auction and we
12 did submit a bid. That bid was fully funded that
13 day and is actually the same financiers who remain
14 our funding sources today. So consistently
15 through this process, we have participated, we've
16 changed the terms of our bid a few times trying to
17 figure out how to make it the most compelling bid
18 under the circumstances.

19 However, I think it's important to
20 note that we were told that the top two bidders in
21 that auction were the Wintel Group and SGC Laird,
22 who we believed must have been qualified as we
23 were with some kind of financing. But as Your
24 Honor knows, it turned out that for whatever

1 reason, the financing didn't materialize with
2 those two bidders.

3 When we learned, in fact, that this
4 was the case, we came back and tried to start
5 making a variety of offers and it came down that
6 Wintel bids had fallen apart with our offer. We
7 are very familiar with the contract.

8 And having helped draft the original
9 prototype on behalf of the company, we know the
10 issues associated with the company very well. So
11 it will not take a lot of time for us to do the
12 documentation on this.

13 The time for us is going to be the
14 time I described for you on the financing. And
15 that is not a contingency, that is, it's just
16 simply the logistics of closing such a
17 transaction.

18 So there aren't the risks of us not
19 knowing the company. There's not any risk of us
20 finding something that we didn't know about.

21 We're well aware, probably more
22 aware than the existing buyer is of the state of
23 the company. And we'll probably have to help them
24 if they buy it in order to help not lose their

1 money.

2 But the situation, I think, has been
3 a difficult one for any potential bidder to stay
4 up just as it has been for the Court, I'm sure, to
5 oversee. And I think that has to be taken into
6 account at least in the circumstances, or at least
7 I hope you would take it into account.

8 THE COURT: All right. Thank you.

9 We were here, approximately, a
10 little over a week ago and at that time I
11 continued the sale hearing for one week, entered a
12 temporary restraining order, essentially in an
13 attempt to keep the Winstar business as a going
14 concern within the context of its Chapter 11
15 existence.

16 At the time I did that, the major
17 and probably driving reason was, in my view, the
18 need to maintain the service to its customers,
19 some of which were described in the record, that
20 range from individuals in small towns to large
21 government agencies, all dependent on the ability
22 of Winstar to deliver services.

23 I did that knowing that, adding to
24 already nonpayment situations that was going to

1 be, approximately, one week of additional paying
2 for those people forced to continue to support the
3 Winstar organization.

4 We came back yesterday for the
5 purpose of entertaining any proposed sale that had
6 been negotiated and the net result was that I was
7 told at the time of the hearing that there wasn't
8 a sale, that all prospects of a transaction had
9 failed, and that this case required conversion to
10 Chapter 7 and began to inquire of the United
11 States trustee of the amount of time it would take
12 to get someone in place, leaving open the
13 possibility that someone could still step forward
14 in that very short bridge of time to make an
15 offer.

16 We announced that decision and while
17 it was being communicated in the context of a
18 24-hour continuance of the hearing so that the
19 conversion motion to be presented, Mr. Jonas
20 stepped up with a proposal that, I think, is clear
21 on the record, and has since been enhanced. The
22 proposed sale by Mr. Jonas' soon to be created
23 entity meets what was the original goal of the
24 sale order, although not in the amount that some

1 had hoped for.

2 It provides for Winstar to remain a
3 going concern, and in my view is supported by the
4 financial consultants to the Debtor, and I find
5 it's in the best interest of the Debtor.

6 I also find that Mr. Jonas, by his
7 personal testimony, is fully prepared to support
8 the financial aspects of the transaction he
9 proposes. And I credit his testimony fully as a
10 business person and entrepreneur. When he says
11 that he intends to pay people timely and to
12 continue Winstar in its new entity form to the
13 extent he can and keep it viable as the concern is
14 today.

15 For all those reasons, I am inclined
16 to select his proposed transaction. Now, I have
17 considered the transaction offered here at the
18 hearing, and I think the most glaring difference
19 between the two offers is that one will within 4
20 hours begin again to assure payment to interested
21 parties and most importantly assure continuing
22 service to the same folks that caused me to
23 continue the hearing for one week.

24 And I don't see that in the

1 alternative transaction offered here at the
2 hearing, so for those reasons I'm prepared to hear
3 the parties on the documents because I'm prepared
4 to approve the sale to the Jonas entity.

5 So now is the time, Ms. Silverstein
6 to step forward or whomever on that side to talk
7 about the documents and any objections that you
8 have with regard to it. And we can start either
9 with the management agreement or the transaction,
10 the actual transaction agreement.

11 MR. SHAPIRO: Your Honor, I think
12 we should try to do it in a logical way, so I
13 propose we start with the asset sale agreement,
14 see if anybody has any problems there and then go
15 with the management agreement, and then go to the
16 order, if that's okay with Your Honor.

17 THE COURT: That's fine.

18 MR. TURNER: Good evening, Your
19 Honor. Andrew Turner, Williams Communications.

20 Your Honor, I regret to report that
21 although I have been able to review the proposed
22 order approving the sale and note that certain of
23 the provisions therein that are of concern to me
24 may also appear in either or both of the

1 management agreement and the other agreement, we
2 didn't receive copies of any of these things until
3 shortly before this hearing this afternoon.

4 Therefore, I'm not prepared to fully
5 address all the concerns. I am prepared to
6 address a couple of specific points with respect
7 to the sale order and will do so at that time
8 concerning Williams that may also appear in the
9 other documents. And if they do, I apologize.

10 THE COURT: Sounds like everybody
11 wants to wait until we get to the sale order,
12 which is the third document. We can go right to
13 that sale order if no one has comments.

14 MR. SHERMAN: Andrew Sherman, Sills,
15 Cummis, Radon, Tischman & Gross on behalf of Qwest
16 Communication. I echo the comments of Williams.
17 We have yet had an opportunity to review the asset
18 purchase agreement, had a quick review of the
19 management agreement. We spent most of our time
20 on the sale order because I really -- it, from
21 Qwest's perspective, has the most objectionable
22 provisions.

23 We would like to reserve our rights
24 on the asset agreement.

1 THE COURT: I'm going to approve
2 agreements tonight. Reservation of rights won't
3 help you. This thing is going to move very
4 quickly hopefully to a closing within 24 to 48
5 hours.

6 But I understand that you haven't
7 had a chance, so you have no comments. So let's
8 move to the order then where it seems people are
9 prepared to comment and hopefully those comments
10 will come back to the other documents that are
11 appropriate.

12 Thank you, Your Honor.

13 MR. TURNER; Andrew Turner,
14 Williams Communications. Your Honor, Williams
15 communications has no contract with the Debtor.
16 That contract has been terminated prepetition and
17 throughout the course of these proceedings, we've
18 entered into a variety of agreements, the latest
19 of which the interim agreement was approved by
20 this Court under which we continue to provide
21 services to the Debtor as if the agreement had not
22 been terminated, pending such further rights and
23 options, parties agreed to in the terms of the
24 interim agreement.

1 We are willing to provide similar
2 services as we have provided to a buyer on a
3 go-forward basis pending negotiation of contracts
4 with that buyer for any modification of those
5 services or for changes in those services as may
6 be appropriate, particularly since it's prepaid,
7 and if the closing, in fact, is imminent
8 tomorrow.

9 Of particular concern to us,
10 however, are some of the provisions with respect
11 to the sale order in Paragraph 23. For example,
12 while Williams has been deferring on net, the on
13 net.

14 THE COURT: Could you hold on a
15 second?

16 MR. TURNER: Sure.

17 THE COURT: Paragraph 23?

18 MR. TURNER: Yes, Your Honor.

19 THE COURT: All right.

20 MR. TURNER: Williams has been
21 deferring its on-net services by agreement under
22 the interim agreement. We would expect on a
23 go-forward basis to be paid both our off net and
24 on-net services, which are the current run rates,

1 \$1 million per week.

2 Second, 15(c) is unduly restrictive
3 on the rights of carriers such as Williams to
4 terminate. For example, the buyer here knows when
5 payment is due, they're prepaying.

6 The provisions purport to buying
7 Williams and other carriers to limit our rights to
8 terminate until five business days after the right
9 to terminate notice of the exercise of the right
10 to terminate has been received by a whole slew of
11 folks, counsel for the Debtor, counsel for the
12 buyers, the Debtors and the buyers themselves.

13 I know from previous experience I've
14 gotten into repeated problems with the notice
15 provisions and who has to get notice and where,
16 whether notice by fax or E-mail is good enough,
17 whether notice by overnight delivery service is
18 good enough, or whether it's deemed given when
19 it's sent or received.

20 I would suggest since the buyer
21 knows when payment is due that they're going to be
22 prepaying, that if they set up -- say they close
23 tomorrow and say, okay, we're prepaying everybody
24 for the first week on Friday, that if they don't

1 pay two days late we're out notice to anybody we
2 have the right to terminate. That the five
3 business days after notice is received is unduly
4 restrictive.

5 We could be in a million dollars a
6 week to the tune of another million dollars should
7 this buyer decide that a few weeks or months into
8 this that it's no longer in his best interest to
9 continue to fund this business and he decides to
10 let it tank.

11 THE COURT: Why Mr. Shapiro can't
12 we just have notice to the buyer and the buyer
13 would have an opportunity to cure any default
14 that's noticed immediately?

15 MR. SHAPIRO: That's really a
16 question, Your Honor, for the buyer. The terms of
17 what notice is provided, I agree, the buyers pay
18 the money. The buyers are the party who should be
19 noticed.

20 THE COURT: We don't want some
21 clerical mistake to cause a payment not to be made
22 and service to be terminated. On the other hand,
23 we want to be sure that these folks are paid
24 timely, which I believe they are going to be, but

1 we want to give the assurance of the document.

2 MR. SHAPIRO: No, I understand, and
3 really I'd ask the buyer.

4 THE COURT: Should we modify this
5 provision of the order to have notice to the --

6 MR. JONAS: Maybe they could send
7 notice to our finance department and also, just in
8 case of like a terrible emergency, to our outside
9 accountants Ernst & Young so that like by the
10 chance that one piece of paper gets lost, that a
11 whole network doesn't go off.

12 MR. SHAPIRO: One thing I'll
13 comment on, I think you have sort of two different
14 possibilities right here. The first week they're
15 just coming into the company, it's a fairly
16 chaotic situation. Right now the employees,
17 obviously things are in turmoil, I think we ought
18 to give a little bit of leeway just in terms of
19 notice.

20 And then after that, there should be
21 a shorter tighter time period when everything has
22 been established.

23 MR. ALBALAH: I respectfully submit
24 we don't need to spend a whole lot of time on this

1 thing because there's going to be -- you heard
2 Mr. Jonas' testimony, the payments are going to be
3 paid. The concern is legitimate.

4 He has two forms of recourse. One,
5 he can send notice and wait the five days. If the
6 five days is no good, I'm here to state on the
7 record on behalf of the buyer that he can go to
8 court and order to show cause as long as we get
9 notice of it two days, business days.

10 This is not an issue. It's not an
11 issue because if you sent notice --

12 MR. SHERMAN: If it's not an issue,
13 why can't it be 48 hours like Your Honor
14 suggested?

15 MR. ALBALAH: The reason is quite
16 simple. The testimony is that keeping the service
17 providers providing service is an integral part of
18 this agreement, we're not going to have 48 hours
19 because of this some slip or flip that services
20 are cut off. This provides adequate protection
21 for the service providers. If they don't think
22 it's adequate protection, they can do whatever
23 they want with the Court.

24 THE COURT: All right. I'm going

1 to modify Paragraph C to indicate that within, and
2 I'll ask counsel to do this in some language
3 within where, just so everybody is on the same
4 page, Page 176, the proposed order, Paragraph C
5 we're going to add a provision that says that
6 after the closing date, that notice is only
7 necessary to the buyer at two addresses designated
8 by the buyer. And if the default isn't cured
9 within three business days after that written
10 notice, then the provider can alter the service as
11 it sees fit.

12 MR. TURNER: Three days from the
13 time notice is sent or received or can we send by
14 fax or?

15 THE COURT: I'm going to -- since
16 it's going to be a notice, a written notice, I'm
17 going to say received at the two locations
18 designated by the buyer. And then Mr. Jonas, it
19 will be your financial officer and your outside
20 accountant, and whoever you designate will be the
21 ones who get those notices.

22 MR. TURNER: The other concern we
23 have, Your Honor --

24 MS. SILVERSTEIN: Can we get fax

1 numbers?

2 THE COURT: I don't think Mr. Jonas
3 is trying to avoid the notice. I think he's
4 trying to tie it down. Fax is acceptable to me as
5 long as it's to the two persons or locations
6 designated by Mr. Jonas.

7 MR. JONAS: This may be being over
8 paranoid, but maybe it's better if we could leave
9 the possibility that it be sent by E-mail if
10 they're going to do it that way. This way there's
11 a record of what the notice said.

12 MR. SHERMAN: We'll do it by fax
13 and E-mail.

14 THE COURT: Fax and E-mail and
15 facsimile to two addresses designated by the
16 buyer. And five business days will be changed to
17 three.

18 MR. TURNER: Thank you, Your
19 Honor. The second concern that Williams has is
20 with respect to what amounts to a preliminary
21 injunction requiring carriers to continue to
22 provide service such as Williams, I'm not
23 particularly adverse to getting paid in advance in
24 three business days' notice. My primary concern

1 in this regard is I don't want my three days to
2 run and have this report enter yet another
3 temporary restraining order at the behest of the
4 government or some other parties in interest
5 telling me I can't cut off for another 30
6 something days.

7 I mean, we need to get that issue
8 out on the table with the FCC. Let's do it.
9 We're not providing a regulated service to the
10 Debtors, although the buyer will be providing
11 regulated service to its customers. We can't be
12 held in bondage for another 32 days or whatever
13 after the three business days runs.

14 THE COURT: Any future, and you can
15 add this language, but I think the rules cover it,
16 any future temporary restraining order,
17 preliminary injunction will not be ex parte and
18 will require bond.

19 MR. TURNER: Thank you. Those are
20 our two primary concerns.

21 THE COURT: So when you come
22 forward feel confident that if that is necessary,
23 I'll require the party, if it is issued, some sort
24 of relief, either in the form of a TRO or an

1 injunction to bond that relief, so that payment be
2 assured whether -- now, you know, the rules, they
3 say the government doesn't have to put a bond up.
4 I can't do anything about that.

5 But to the extent I can do
6 something, it would be a bond relief.

7 MR. TURNER: Thank you, Your Honor.

8 THE COURT: You've taken all the
9 pain you have to take hopefully in connection with
10 that.

11 MS. NEWELL: The FCC would like to
12 receive the same notice of any action that would
13 be discontinuance just so that the FCC knows if it
14 needs to take any action in connection with that.

15 MR. GWYNNE: Your Honor, I don't
16 think we have any duty to provide notice to the
17 FCC.

18 THE COURT: I agree.

19 MR. GWYNNE: The Debtors can send
20 the notice to the FCC.

21 THE COURT: I agree, but I think if
22 you're monitoring this, it won't need a whole lot
23 of notice. It will be pretty obvious. I'm not
24 going to order them to notice the government

1 because of their positions.

2 But I assume -- doesn't the
3 government know everything any way?

4 MS. NEWELL; if only that were true,
5 Your Honor.

6 THE COURT: You have satellites.
7 All right.

8 MR. GWYNNE: Thank you, Your
9 Honor. Kurt Gwynne on behalf of MCI WorldCom.

10 Trying not to repeat anything that
11 has been handled, Your Honor, in Paragraph 8, the
12 third line down, I think that 30 million is now 60
13 million. That should be changed, unless Mr. Jonas
14 would like to make it 90.

15 THE COURT: 60 million was what
16 Mr. Jonas testified to, so that it will be altered
17 or modified to 60 million.

18 MR. GWYNNE: And at the end of
19 Paragraph 8, this money is going to be held in
20 escrow and, you know, presumably used to pay the
21 carriers. At the end it says, you know, if
22 there's some determination that claims that have
23 been paid, including claims that have been
24 accrued, then within five days written notice to

1 the debtors and its agent for the post-petition,
2 the buyer can withdraw its money.

3 The notice should be the post buyers
4 since we are the ones who are supposed to be paid,
5 particularly if --

6 THE COURT: Well, we'll add service
7 providers.

8 MR. GWYNNE: And only absent an
9 objection within that five-day period.

10 THE COURT: Does the Court give
11 notice?

12 MR. GWYNNE: I don't believe so.

13 THE COURT: So we'll add --

14 MR. ALBALAH: With all due respect,
15 I can address this from a business standpoint, not
16 as good as my client. I don't think this is
17 necessary. I'm here -- this is the deal. We're
18 not negotiating at this point.

19 THE COURT: I understand you're not
20 negotiating, but it's my order, so I get to draft
21 it even though this is proposed. I'm not going to
22 engage in any unreasonable conditions, but if
23 there is a withdrawal because of the ramifications
24 of how you got into this transaction, there ought

1 to be as broad notice to the interested folks that
2 participated in the hearing. And that's all
3 that's going on.

4 That's not -- it's a service that
5 they just push a button.

6 MR. JONAS: The notice, I think, I
7 don't have any objection to what he's saying, but
8 the notice should only be to the people who are
9 covered by this order for as long as they're
10 covered by this order. So if, for instance, --

11 THE COURT: That's true.

12 MR. JONAS: Would it change from
13 Williams, not that we're doing this, but if we
14 were to change from Williams to Level Three, then
15 we shouldn't have to tell Level Three, or if, for
16 instance, at the end of 120 days, Verizon enters
17 into a new agreement with us and that agreement
18 doesn't provide for that, you know, whether we
19 move the money, we have to tell them immediately,
20 it should only be during the 120 days that the
21 order is in effect.

22 THE COURT: I don't think anybody
23 would have a problem with that. To the extent
24 that the obligation pertains to this agreement,

1 then you have to give notice.

2 MR. GWYNNE: If there's an
3 objection within that five days, Your Honor, we
4 would request that there not be a withdrawal
5 without court approval if they send us notice and
6 we write a letter. Wait a minute, you haven't
7 paid us. You still owe us a million dollars, you
8 still owe us 500,000, or we have a bill that
9 hasn't been issued yet, it covers that time period
10 that
11 they --

12 THE COURT: I'm not going to do
13 that, but I'm assuming you can get to me quick
14 enough once you get notice and the Court has
15 notice, so you'll get in here and very quickly to
16 get them stopped.

17 They have to give you five days'
18 notice. You got a half hour's notice to read the
19 agreement, so they shouldn't complain if you
20 quickly run to the Court to stop them from the
21 withdrawal.

22 MR. GWYNNE: Your Honor, Paragraph
23 9.

24 MR. SHAPIRO: Can I make one

1 comment, Your Honor?

2 THE COURT: Sure.

3 MR. SHAPIRO: I think this may be
4 relevant and helpful to Mr. Gwynne.

5 THE COURT: Sure.

6 MR. SHAPIRO: There's a letter from
7 IDT. There were a couple of things that we were
8 concerned about when we negotiated this last
9 night, and in particular I wanted to be sure that
10 if something like what Mr. Gwynne was proposing,
11 that the Debtor has an indemnity coming back from
12 the buyer since, the buyer only had \$30 million, I
13 want to make sure that we had more on the book.

14 So we agreed last night that IDT
15 Corporation would reimburse the buyers, and we
16 have a letter from IDT saying that, as defined in
17 the management agreement, not utilized for the
18 purposes described in the management agreement.
19 And by reading that, buyer can see that we had
20 this indemnity right.

21 So that if it turns out they took
22 the money and ran and didn't pay bills that they
23 were supposed to have paid, we have a recourse
24 back to the parent corporation who we know has

1 lots of money.

2 THE COURT: I don't know if that's
3 what you agreed to.

4 MR. JONAS: We signed to it. I
5 guess we agreed to it. I wasn't there.

6 MR. ALBALAH: Your Honor, we signed
7 to it. We agreed to it.

8 MR. GWYNNE: Your Honor, I
9 appreciate that. It would be good to know if
10 something happens.

11 With respect to the next paragraph,
12 Your Honor, my understanding is we're having a
13 hearing on the injunction after this one. This is
14 an injunction.

15 And again, now, we're doing -- we're
16 enjoining our rights under Section 366 in a sale
17 order, again, with no adversary proceeding, with
18 no basis for it in the code, and Your Honor held
19 that that is improper. Again, if we want to deal
20 with -- Your Honor mentioned yesterday national
21 security interests. Well, let's deal with them in
22 an injunction hearing. Let's find out what the
23 national security and injunction should be
24 narrowly tailored.

1 I think you mentioned when you were
2 going to approve the sale the individual in a
3 remote area, that you know, that person would
4 still have service, too. Well, yeah, I don't
5 think that that raises national security concerns,
6 you know, that example.

7 The FCC is here. I understand they
8 have witnesses. We should proceed with the
9 hearing on the injunction and determine if an
10 injunction is appropriate. If we have the right
11 to terminate service under Section 366, which
12 under Your Honor's well reasoned opinion in
13 Connexus, I don't see how anybody could conclude
14 otherwise. If we have that right, that shouldn't
15 be enjoined in the sale order. We should deal
16 with that separately in the context of the
17 injunction proceeding, which in my understanding
18 is going to be after this hearing.

19 I realize it's getting late. I
20 don't know that, Your Honor.

21 THE COURT: Well, I put it
22 afterwards because I assumed that with the
23 transaction, the TRO would be dissolved and you
24 wouldn't need to go to the full 20 days of the TRO

1 or to a preliminary injunction.

2 MR. GWYNNE: Well, if the TRO is
3 dissolved, then you take the injunction out of
4 this order. I think the carriers are happy, but
5 they might not have services for very long.

6 THE COURT: But I wasn't thinking
7 about taking that out of this order. I was
8 thinking that the order would cover what the
9 TRO -- but let me hear from the Debtor or the
10 buyer.

11 MR. KAROTKIN: Excuse me. I'm not
12 sure I understand what paragraph was being
13 referenced.

14 MR. GWYNNE: Paragraph 9 on Page
15 11.

16 MR. KAROTKIN: Paragraph 9 is not
17 an injunction.

18 THE COURT: It uses the word
19 permanently enjoined about 15 lines down. That
20 constitutes something other than an injunction?

21 MR. KAROTKIN: That basically, if I
22 may, Your Honor, Paragraph 9 says anyone who has
23 an interest, holding an interest, which all the
24 assets are being sold free and clear of, if you

1 look on the one, two, three, four, fifth line are
2 enjoined from chasing the property to collect
3 those. So this is perfectly appropriate.

4 MR. GWYNNE: It refers to claims --
5 we're enjoined from trying to assert any claims
6 against the buyer and we have to continue to
7 provide services. You know, that read with the
8 rest of this is certainly injunction. It uses the
9 word injunction, and Your Honor, this isn't an
10 administrative proceeding. One has never been
11 filed.

12 Again, you said in Connexus that's
13 improper on basis alone to deny it. We shouldn't
14 be enjoined in this sale process when we
15 supposedly have injunction proceedings
16 procedurally defective as they may be, and that we
17 should have the right to have the hearing that
18 Your Honor told us we would have yesterday on that
19 injunction proceeding.

20 And if we have the right to
21 terminate under 366 after the injunction hearing
22 if Your Honor holds that we still have that right,
23 then, you know regardless of what's in the sale
24 order, we should be able to exercise.